

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRYAN J. STANLEY,

Petitioner,

v.

ORDER

14-cv-181-wmc

GREGORY J. VAN RYBROEK, Superintendent,
Mendota Mental Health Institution,

Respondent.¹

Petitioner Bryan J. Stanley is presently in custody of the Wisconsin Department of Health Services at the Mendota Mental Health Institute. Stanley seeks a writ of habeas corpus under 28 U.S.C. § 2254 to challenge the revocation of his conditional release from commitment to institutional care. After conducting a preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the court concludes that an answer is needed from the respondent.

FACTS

In 1985, Stanley was charged with three counts of first-degree intentional homicide in La Crosse County Case No. 85CF79. He was found not guilty by reason of mental disease or defect (“NGI” or not guilty by reason of insanity) and committed for institutional care pursuant to Wis. Stat. § 971.17 (1985-86). In 2009, the Wisconsin Court of Appeals determined that Stanley should return to the community on conditional release status. *See State v. Stanley*, 2009 WI App 1, ¶ 1, 315 Wis. 2d 770, 762 N.W.2d 864 (unpublished).

¹ Petitioner lists the respondent as “Greg Vanrybroeck.” For purposes of clarifying the record, the court takes judicial notice that the Superintendent of the Mendota Mental Health Institute is Gregory J. Van Rybroek and corrects the spelling of respondent’s name accordingly.

Accordingly, Stanley was released from custody under the terms of a conditional release plan prepared by the Wisconsin Department of Health Services and the La Crosse County Department of Human Services. *See State v. Stanley*, 2012 WI App 42, ¶ 1, 340 Wis. 2d 663, 667, 814 N.W.2d 867, 869.

Stanley returned to state custody on March 12, 2012. On May 9, 2012, the circuit court revoked his conditional release after finding that he violated the first rule of his conditional release plan by failing to report intrusive hostile and violent thoughts to his psychiatrist or to the professionals who comprised his conditional release team. On direct appeal, Stanley argued that the record did not support the circuit court's determination that his failure to report violent thoughts to his psychiatrist or his conditional release team constituted a violation of a term of his release. The Wisconsin Court of Appeals rejected that argument and affirmed the circuit court's decision after concluding that there was sufficient evidence to support the revocation. *See State v. Stanley*, 2013 WI App 84, 348 Wis. 2d 763, 833 N.W.2d 873. On November 26, 2013, the Wisconsin Supreme Court denied Stanley's petition for review.

In his pending habeas corpus petition, Stanley contends that he is entitled to relief pursuant to 28 U.S.C. § 2254 because his revocation was "based on conduct that was not expressly prohibited in the conditional release plan." Thus, he appears to challenge the legal sufficiency of the evidence. Because it further appears from this limited record that Stanley has exhausted all available state court remedies with respect to this claim and that his petition is timely, the court will authorize service of the petition on the respondent.

ORDER

IT IS ORDERED THAT:

1. **Service of petition.** Pursuant to an informal service agreement between the Attorney General and the court, the Attorney General is being notified to seek service on the respondent, Gregory J. Van Rybroek, in his official capacity as Superintendent of the Mendota Mental Health Institution.
2. **Answer deadline.** Within 60 days of the date of service of this order, respondent must file an answer to the petition, in compliance with Rule 5 of the Rules Governing Section 2254 Cases, showing cause, if any, why this writ should not issue.
3. **Motions to dismiss.** If the state contends that the petition is subject to dismissal on its face - - on grounds such as the statute of limitations, an unauthorized successive petition, lack of exhaustion or procedural default - - then it is authorized to file within 30 days of this order, a motion to dismiss, a supporting brief and any documents relevant to the motion. Petitioner shall have 20 days following service of any dismissal motion within which to file and serve his responsive brief and any supporting documents. The state shall have 10 days following service of the response within which to file a reply.
4. **Denial of motion to dismiss.** If the court denies such a motion to dismiss in whole or in part, then it will set deadlines for the state to file its answer and for the parties to brief the merits.
5. **Briefing on the merits.** In the event that the respondent does not file a motion to dismiss as outlined above, the court will proceed to consider the

merits. In this instance, the petitioner has not filed a separate memorandum or brief in support of his petition for relief. Therefore, the parties shall adhere to the following briefing schedule with respect to the merits of petitioner's claims:

- a. Petitioner must file a brief in support of his petition within 30 days after respondent files its answer. **If he fails to file a brief within the time allowed, his petition may be dismissed without further notice pursuant to Fed. R. Civ. P. 41(b).**
- b. Once petitioner submits his brief or his time to submit a brief expires, respondent shall file a brief in response to the petition within 30 days.
- c. Once respondent files a brief in opposition, petitioner shall have 20 days to file a reply if he wishes to do so.

Entered this 10th day of March, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge